IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

MFA.No. 900 of 2001(B)

WCC.95/1994 of W.C.C.,ERNAKULAM
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APPELLANT - SECOND RESPONDENT:

K.D. VARKEY, S/O. DEVASSY, KALLOOKARAN HOUSE, KARUKUTY P.O., VIA ANGAMALY ERNAKULAM DISTRICT.

BY ADV. SRI.P.F.THOMAS
SRI.SUNIL THOMAS

RESPONDENTS - APPLICANTS - RESPONDENTS:
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1. **P.V. JAMES @ JACOB, S/O. VARGHESE, PANANGATTUPARAMBIL HOUSE, KARUKUTTY P.O., ANGAMALY.**

2. **THERU KURUMBAN, VETTUKKATTIL AMBADAN HOUSE, AYYAMPUZHA P.O., POTA, VIA MANJAPRA.**

3. **JOGEY, S/O. DEVASSY, KALLOOKKARAN HOUSE, KARUKUTTY P.O., VIA ANGAMALY.**

BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 900 OF 2001

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Dated this the 15th day of October, 2007

J U D G M E N T

Second opposite party W.C.C. No.95 of 1994 on the file of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Ernakulam is the appellant.

2. First respondent filed a petition under Section 22 of the Workmen's Compensation Act claiming compensation on account of the employment injury sustained by him. It was averred that he was an employee of the appellant and during the course of employment he sustained injury to his left eye on 2.2.1993 from a splinter of granite stone. First respondent joined work after the accident and again on 16.4.1993 he met with a similar accident and he sustained injury on his right eye from the splinter of granite stone. He filed the petition claiming compensation and contended that his case is of that of a total blindness. Appellant entered appearance. The appellant disputed the employer-employee relationship, quantum of compensation claimed, etc. Deputy Labour Commissioner found that the first respondent was an

employee of the appellant. Commissioner also found that there was 70% loss of earning capacity and awarded compensation taking into account 70% as the disability. It was also found that the first respondent was entitled to interest at the rate of 6% on the compensation awarded, if the same is not deposited within one month from the date of adjudication. Challenging that order, this appeal is filed.

3. Learned counsel appearing for the appellant has argued before me that the first respondent filed the petition claiming compensation contending that it is a case of total blindness. But the Commissioner took it as a case covered by Section 4(1)(c)(i) of the Act. It is argued that the Commissioner did not accept the case of the first respondent that it is a case of loss of total eye sight and took it as a case of loss of partial eye sight. According to the appellant in the case of loss of vision of one eye the first respondent can claim only 30% disability and under Schedule I Part II items 26 & 26A for loss of partial vision the percentage fixed is 10 and the first respondent is entitled to only 40% loss of earning. First respondent contended that the evidence adduced in the case

shows that the first respondent lost sight of the right eye completely and major portion of the vision of the left eye. It was further contended that the Medical Board has stated that sight of left eye is very poor and fixed the same as 6/36 fixing the permanent disability at 60%. It was also contended that the Commissioner took it as a case covered by items 25 and 26 of Part II of Schedule I and fixed the disability at 70%. It was contended that he is entitled to get interest from the date of the accident and not from one month after the date of adjudication.

4. First respondent claimed compensation contending that it is a case of total eye sight of both eyes. He claimed compensation under item No.4 of Part I of Schedule I which reads as follows:

"Sl. No.	Description of Injury	Percentage of loss loss of earning capacity
4.	Loss of sight to such an extent as to render their claimant unable to perform any work for which eye-sight is essential	100"

5. Certificate produced shows that first respondent

lost sight of one eye and vision of the other eye is very poor and hence the Medical Board fixed the disability at 60%. It is to be noted that the accident occurred prior to the date of amendment. Item 25 deals with loss of one eye and 26 deals with loss of vision of one eye. Neither items 25 nor 26 deals with a situation which arose in this case. So the injury sustained by the workman cannot be treated as a schedule injury. Medical Board has fixed the disability at 60%. In New India Assurance Co. Ltd. v. Sreedharan (1995 (1) KLT 275 (F.B.) the Full Bench held that where the report of the qualified practitioner is certifying the loss of earning capacity, the Commissioner cannot ignore the report and fix the compensation diregarding it. In this case the Medical Board fixed the disability at 60%. So the disability fixed by the Commissioner cannot be accepted and the same has to be reduced to 60%. Learned counsel appearing for the first respondent relying on a decision reported in Jayaprasad v. Rejimon Philip (ILR 2007 (3) Kerala 723) has argued that in appropriate cases disability can be assessed at 100%. He also relied on a decision reported in Pratap Narain Singh Deo

v. Srinivas Subata (1976 (1) SCC 289). Both the above decisions are under the provisions of the Motor Vehicles Act. In Jayaprasad's case this Court found that the case has to be treated as cent percent functional disability. But in view of the principle laid down in Sreedharan's case (supra) which arose under the Workmen's Compensation Act, I follow the principles laid down in that decision. So the disability can be taken only as 60%. The amount due to the first respondent can be worked out as follows:

$$\text{“}\frac{1000 \times 50 \times 203.85 \times 60}{100 \times 100} = 61155\text{”}$$

6. No appeal is filed by the first respondent. In National Insurance Co. Ltd. v. Mubasir Ahmed & Anr. (2007 AIR SCW 1265), the Apex Court had held that liability of the employer or insurer is to deposit the amount from the date on which it falls due and unless there is adjudication, the question of an amount falling due does not arise. So the finding of the Commissioner that interest will run only after 30 days of the order does not call for any interference. The other

finding of the Commissioner that the first respondent is the workman of the appellant is a finding of fact based on good evidence. That finding is not challenged before me also.

7. In the result, the appeal is allowed in part. The order passed by the Commissioner is modified and the first respondent is entitled to get a compensation of Rs.61,155/- instead of Rs.71,348/-. In all other respects, the order passed by the Commissioner shall stand confirmed.

Civil Miscellaneous Petition No.6978 of 2001 will stand closed.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 900 OF 2001

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J U D G M E N T

15TH OCTOBER, 2007